

Healy v. Spencer, 406 F. Supp.2d 129 (D. Mass. 2005)). However, to the extent this Court finds this non-binding case persuasive, Petitioners misapply the standard. In *Healy*, the Court held that extraordinary circumstances warranted release of the petitioner based on (1) the strength of Petitioners' claim that his underlying detention was unconstitutional, (2) "the absence of any flight or risk to the community," and (3) weakness of the countervailing arguments. *Healy*, 406 F. Supp.2d at 130. Mr. Aguasviva fails to meet this standard. As explained in Respondents' opposition to Petitioners' motion for a stay of removal, Mr. Aguasviva is not likely to succeed on the merits of his claim that he is entitled to release and an injunction staying his removal. ECF Nos. 489, 498. Further, ICE does reasonably believe that Mr. Aguasviva is a flight risk. ECF No. 489-1 at ¶ 35.

Respondents' countervailing arguments against release are also persuasive. Respondents have an interest in detaining Mr. Aguasviva for the purpose of removal and Respondents will be able to remove Mr. Aguasviva shortly after this Court lifts the stay on his removal. Therefore, Mr. Aguasviva is likely to be removed in the reasonably foreseeable future and his detention is lawful under 8 U.S.C. § 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001). The COVID-19 pandemic alone is not enough to make his detention unlawful especially given that Petitioners have not allege – nor could they – that Respondents are unprepared to respond to any spread of COVID-19 within the detained population. Indeed, Respondents have responded to the threat posed by COVID-19 in facilities where aliens are detained across the country.¹ See Exhibit A.

¹ Respondents have attached declarations from other cases where individuals are seeking release due to COVID-19. Undersigned counsel has been informed that Respondents are preparing a declaration that details the steps Respondents have taken to protect the detained population at Plymouth County House of Corrections, but as of the time of this filing, the declaration was not complete. Respondents intend to file this declaration as soon as possible but no later than 8:00 am on March 26, 2020.

Moreover, Plymouth County has also taken special precautions to protect detainees in their facilities. *See* Exhibit B, Affidavit of Plymouth County Sheriff Joseph D. McDonald. The Plymouth County Correctional Facility is operated by the Plymouth County Sheriff's Department (the "Department"). *Id.* ¶ 2. To provide for the safety and health of its inmates and detained individuals, the Department maintains a full-time medical staff, which is on duty 24-7 and contracts with a vendor to provide an onsite physician. *Id.* ¶ 3. Additionally, the Department has contacts with hospitals throughout the greater Boston area to provide specialty or advanced care as needed, including Beth Israel Deaconess Plymouth community hospital, which is located within one mile of the Facility. *Id.* The Department has taken special precautions to protect inmates and staff from exposure to the Coronavirus, including the following: 1) beginning in February, the Department enhanced its inmate intake procedure to obtain additional information about travel and exposure to illness; 2) the Department has adopted treatment and detection practices consistent with guidelines from the Center for Disease Controls ("CDC") and Department of Public Health ("DPH"); 3) the Department's health services administrator is in frequent contact with DPH and consults them on the challenges facing the Department; 4) the Department suspended visits by friends, families, and volunteers; 5) the Department restricted attorney visits to non-contact; 6) the Department has kept non-essential staff from entering the Facility, consistent with the governor's order for executive staff; 7) the Department has ceased inmate assignments to the farm operation, community work crew, and other work details outside the Facility; 8) the Department has eliminated unnecessary movement within the Facility; 9) the Department established a housing unit for newly admitted inmates and inmates who leave and return to the Facility, to monitor for signs and symptoms of the virus; 10) inmates remain in the unit until they clear the incubation period; 11) the Department has worked with Massachusetts Court officials to limit travel outside

the Facility by conducting hearings by videoconference and telephone, greatly reducing travel to and from the Facility and resulting potential exposure; 12) the Department has changed recreation and meal schedules to provide more space in the dayrooms; 13) the Department maintains an aggressive cleaning schedule for the housing units and conducts daily sanitation of transportation vans; the Department has educated staff and inmates on sanitation practices and proper social distancing. *Id.* ¶ 4. Currently, the Facility is well below maximum capacity, affording the Department flexibility in making housing assignments that provide more space for the inmates. *Id.* ¶ 5.

As a result, Petitioners cannot meet their burden to establish that either “extraordinary circumstances” or the Constitution and laws of the United States require Mr. Aguasviva’s release.² Accordingly, the Court should deny their motion for immediate interim release.

² Petitioners also cite to a recent Ninth Circuit decision releasing a detained alien due to COVID-19 concerns. ECF No. 500 at 2 (citing *Xochihua-Jaimes v. Barr*, No. 18-71460, Order, ECF No. 53, at 1 (9th Cir. March 23, 2020)). However, this decision seemingly conflicts with prior Ninth Circuit case that suggests that the Court lacks *sua sponte* authority to release a detained alien. *See Aguilar-Ramos v. Holder*, 594 F.3d 701, 704 n3 (9th Cir. 2010) (“[W]e are not convinced that we have authority to *sua sponte* release Aguilar. . .”).

Respectfully submitted this 25th day of March, 2020.

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CERTIFICATE OF SERVICE

I, Mary Larakers, Trial Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: March 25, 2020

/s/ Mary L. Larakers
Mary L. Larakers
Trial Attorney

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
DECLARATION**

JOSE L. VELESACA and ABRAHAM CARLO
UZATEGUI NAVARRO, on their own behalf and on
behalf of others similarly situated,

Case No. 1:20-cv-1803

Petitioners-Plaintiffs,

v.

THOMAS R. DECKER, in his official capacity as New York Field Office Director for U.S. Immigration and Customs Enforcement; MATTHEW ALBENCE, in his official capacity as the Acting Director for U.S. Immigration and Customs Enforcement; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; CHAD WOLF, in his official capacity as Secretary of the U.S. Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; CARL E. DUBOIS, in his official capacity as the Sheriff of Orange County

Respondents-Defendants.

DECLARATION OF CAPTAIN JENNIFER MOON

I, Captain Jennifer Moon, MPH, MSN, FNP-BC, make the following statements under oath and subject to the penalty of perjury:

1. I am employed by U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), and currently serve as the Deputy Assistant Director for Healthcare Compliance with ICE Health Service Corps (IHSC). I have held this position since November 1, 2018.
2. In my current position, I provide oversight of the Medical Case Management Unit to which the Field Medical Coordinators (FMCs) report. The FMCs serve as medical consultants to the ICE field offices and oversee clinical services at Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees, including the Bergen County Jail, Essex County Correctional Center (Essex County Jail), Hudson County Corrections and Rehabilitation Center (Hudson County Jail), and Orange County Correctional Facility (Orange County Jail).

3. IHSC's FMCs ensure that the provision of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by the IGSA contract. The FMCs do not provide hands-on care or direct the care within the IGSA's but monitor the medical care and services provided by the contract facilities. Medical staff at the contract facilities are directly responsible for medical care at the facility.
4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.
5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.
6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control (CDC) to safeguard those in its custody and care.
7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and reasonable accommodations are provided as medically appropriate.
8. At the Bergen County Jail, Essex County Jail, Hudson County Jail and Orange County Jail, during intake medical screenings, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.
9. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. Those detainees who present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.
10. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases. Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines.
11. The Bergen, Essex, Hudson and Orange County Jails each has the following medical capabilities:

- The Bergen County Jail, which manages both males and females, provides daily access to sick calls in a clinical setting and has an onsite medical infirmary and mental health services with the ability to admit patients at the local hospital for mental health care.
- The Essex County Jail, which manages males only, provides daily access to sick calls in a clinical setting, has an onsite medical infirmary and provides onsite dental, podiatry, optometry, and hemodialysis services.
- The Hudson County Jail (Hudson), which manages both males and females, provides daily access to sick calls in a clinical setting, and has an onsite medical infirmary. Hudson manages stable chronic care patients but does not have hospital services for acute mental health patients. Hudson provides onsite dental, gynecological and optometry services.
- Orange County Jail, which manages both males and females, provides daily access to sick calls in a clinical setting, has a medical infirmary on site and provides mental health services by a separate county entity.

12. As of 5:00 p.m. on March 24, 2020, IHSC has the following information:

- a. There are two ICE detainee suspected cases of COVID-19 in the Bergen County Jail who are on medical observation per CDC guidelines. There are zero suspected cases at Essex County Jail and Hudson County Jail. There is one suspected case among the inmate population at the Orange County Jail. However, inmates and ICE detainees are housed separately and no ICE detainees are affected.
- b. There is one ICE detainee from Bergen County Jail at the hospital who tested positive for COVID 19 and is in isolation and receiving treatment per CDC guidelines. There are zero confirmed cases of COVID-19 in the Essex County Jail and Orange County Jails. There are two confirmed cases of COVID-19 at Hudson County Jail among the inmate population which are housed in units separately from ICE detainees. No Hudson County ICE detainees are affected. The two confirmed cases are isolated and receiving medical treatment consistent with CDC guidelines.

13. The Bergen County Jail, Hudson County Jail, Essex County Jail, and Orange County Jail all have populations within their approved capacities and are not overcrowded.

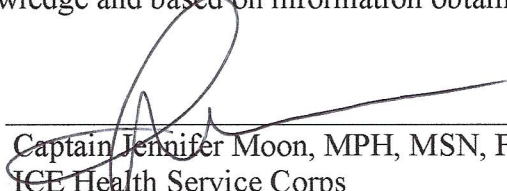
14. The four facilities have increased sanitation frequency and provide sanitation supplies as follows:

- Bergen County Jail – provides disinfectant spray, hand sanitizer, and soap in every housing unit at the jail. The administration is encouraging both staff and the jail general population to use these tools often and liberally.

- Essex County Jail – provides disinfectants to staff and cleaning crews and CDC recommended cleaning and disinfection above and beyond normal activity have been implemented.
 - Hudson County Jail – provides hand sanitizer to detainees and staff and cleans and disinfects each housing unit between shifts and entire cell blocks on a rotational schedule.
 - Orange County Jail – provides every Housing Unit in the jail with disinfectant spray, soap, hot water and gloves. Jail staff and the jail general population are directed to use these cleaning tools often and liberally.
15. The Bergen County, Essex County, Hudson County, and Orange County Jails have limited professional visits to noncontact visits and suspended in person social visitation and facility tours.
16. The Bergen County, Essex County, Hudson County, and Orange County Jails are screening all staff and vendors when they enter the facilities including body temperatures.
17. The Bergen County, Essex County, Hudson County, and Orange County Jails are screening all detainee intakes when they enter the facilities including travel histories, medical histories and checking body temperatures and have procedures to continue monitoring the populations' health.
18. The Bergen County, Essex County, Hudson County, and Orange County Jails provide education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting to seek medical care if they feel ill. The facilities provide detainees daily access to sick call.
19. The Bergen County, Essex County, Hudson County, and Orange County Jails have identified housing units for the quarantine of patients who are suspected of or test positive for COVID-19 infection to be addressed as set forth in paragraphs 8, 9 and 10, *supra*.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and based on information obtained from other individuals employed by ICE.

DATED: March 24, 2020



Captain Jennifer Moon, MPH, MSN, FNP-BC
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

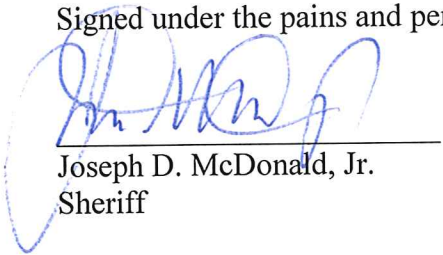
AFFIDAVIT OF SHERIFF JOSEPH D. McDONALD, JR.

I, Joseph D. McDonald, Jr., depose and state the following of my own knowledge:

1. I am the Sheriff of Plymouth County. I have held that office since January of 2005. Prior to my election, I was an attorney in private practice and then an assistant district attorney. I have been an attorney since 1991.
2. The primary mission of the Sheriff's Department is the operation of the Plymouth County Correctional Facility. The safety of the persons committed to the Department's care and custody, the staff, and the public is of paramount importance.
3. The Department takes very seriously its obligation to provide proper medical care to the inmates at the Facility. The Department maintains a full-time medical staff which is on duty 24-7. The Department contracts with a vendor to provide an on-site physician. Additionally, the Department has contacts with hospitals throughout the greater Boston area to provide specialty or advanced care as needed. Beth Israel Deaconess Plymouth community hospital is located within one mile of the Facility.
4. The Department has taken special precautions to protect inmates and staff from exposure to the Coronavirus. These precautions include:
 - a. Beginning in February, the Department enhanced its inmate intake procedure to obtain additional information about travel and exposure to illness.
 - b. The Department has adopted treatment and detection practices consistent with guidelines from the Center for Disease Controls ("CDC") and Department of Public Health ("DPH"). The Department's health services administrator is in frequent contact with DPH and consults them on the challenges facing the Department.
 - c. The Department suspended visits by friends, families, and volunteers. To assist with the transition, the Department arranged with its telephone vendors to provide two free calls per week.
 - d. The Department restricted attorney visits to non-contact. The Department disabled monitoring and recording functions for visit phones.
 - e. The Department has kept non-essential staff from entering the Facility, consistent with the governor's order for executive staff.
 - f. The Department has ceased inmate assignments to the farm operation, community work crew, and other work details outside the Facility.

- g. The Department has eliminated unnecessary movement within the Facility.
 - h. The Department established a housing unit for newly admitted inmates and inmates who leave and return to the Facility, to monitor for signs and symptoms of the virus. Inmates remain in the unit until they clear the incubation period.
 - i. The Department has worked with Trial Court officials to limit travel outside the Facility by conducting hearings by videoconference and telephone. This greatly has reduced travel to and from the Facility and resulting potential exposure.
 - j. The Department has changed recreation and meal schedules to provide more space in the dayrooms.
 - k. The Department maintains an aggressive cleaning schedule for the housing units and conducts daily sanitation of transportation vans.
 - l. The Department has educated staff and inmates on sanitation practices and proper social distancing.
5. Currently, the Facility is well below maximum capacity. This has afforded the Department flexibility in making housing assignments which provide more space for the inmates.

Signed under the pains and penalties of perjury this 25th Day of March, 2020,



Joseph D. McDonald, Jr.
Sheriff